



City of Helotes
Development Services
Department
P.O. Box 507
12951 Bandera Road
Helotes, TX 78023
Phone (210) 695.8877
Fax (210) 695.2123

Application Date: _____

APPLICATION TO BOARD OF ADJUSTMENT

CHAPTER 98, *Board of Adjustment*

NAME OF APPLICANT: _____

MAILING ADDRESS: _____

PHONE #: _____

STATUS OF APPLICANT: OWNER: _____

AGENT: _____ (IF AGENT, ATTACH LETTER OF AUTHORIZATION)

PROPERTY DESCRIPTION

PHYSICAL ADDRESS: _____

LEGAL DESCRIPTION: _____

CURRENT ZONING: _____ PROPOSED ZONING: _____

EXISTING USE: _____ PROPOSED USE: _____

ACRES/SQ. FT.: _____ DOES OWNER OWN ADJACENT PROPERTIES? ☐ YES ☐ NO

REQUESTED BOARD ACTION SPECIAL EXCEPTION _____ VARIANCE _____

PURPOSE OF REQUEST: _____

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS APPLICATION AND THE ATTACHED INSTRUCTION SHEET AND KNOW THE INFORMATION I HAVE PROVIDED TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS APPLICATION WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A VARIANCE OR SPECIAL EXCEPTION DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING THE USE OF PROPERTY.

APPLICANT'S SIGNATURE _____

DATE _____

Office Use Only



APPLICATION TO BOARD OF ADJUSTMENT FOR VARIANCE

INSTRUCTION SHEET

1. COMPLETE THE APPLICATION FORM.
2. INCLUDE THE NATURE AND EFFECT OF THE PROPOSED VARIANCE ON THE APPLICATION FORM.
3. INCLUDE TWELVE (12) COPIES OF ALL PERTINENT DOCUMENTATION.
5. IN THE EVENT THE VARIANCE IS DENIED BY THE BOARD OF ADJUSTMENT, THE APPLICANT MAY APPEAL THE DECISION IN DISTRICT COURT.
7. THE BOARD OF ADJUSTMENT MEETS ON AN AS NEEDED BASIS.



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BOARD OF ADJUSTMENT FINDINGS OF FACTS FOR ZONING ORDINANCE VARIANCE

APPLICANT: _____

ADDRESS: _____

UPON GIVING PUBLIC NOTICE AND CONDUCTING A PUBLIC HEARING ON THIS VARIANCE REQUEST IN ACCORDANCE WITH CHAPTER 98, ARTICLE XIII OF THE ZONING ORDINANCE, THE BOARD OF ADJUSTMENT ADOPTS THESE SPECIFIC, WRITTEN FINDINGS AS FOLLOWS:

	YES	NO
1. THAT THERE ARE SPECIAL CIRCUMSTANCES OR CONDITIONS TO THE PROPERTY INVOLVED; AND		
2. THAT THE STRICT APPLICATION OF THE TERMS OF THE ORDINANCE WILL IMPOSE UPON THE APPLICATION UNUSUAL AND PRACTICAL DIFFICULTIES OR PARTICULAR HARDSHIP.		
3. THAT LITERAL INTERPRETATION OF THE ORDINANCE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME DISTRICT UNDER THE ORDINANCE; AND		
4. THAT THE PROPOSED VARIANCE IS IN HARMONY WITH THE ORDINANCE'S GENERAL PURPOSE AND INTENT; AND		
5. THAT THE GRANTING OF THE VARIANCE WILL NOT MERELY SERVE AS A CONVENIENCE TO THE APPLICANT; AND		
6. THAT THE GRANTING OF THE VARIANCE WILL ALLEVIATE SOME DEMONSTRABLE AND UNUSUAL HARDSHIP OR DIFFICULTY OR DIFFICULTIES FOR THE APPLICANT; AND		
7. THAT GRANTING THE VARIANCE WILL NOT CONFER UPON THE APPLICANT ANY SPECIAL PRIVILEGE THAT IS DENIED BY THE ORDINANCE TO OTHER SIMILARLY-SITUATED PROPERTIES IN THE SAME DISTRICT; AND		
8. THAT THE VARIANCE IS IN THE PUBLIC INTEREST AND WILL ENSURE THAT PUBLIC SUBSTANTIAL JUSTICE WILL BE DONE.		
9. THAT THE SURROUNDING PROPERTY WILL BE PROPERLY PROTECTED.		
10. REMAINING REGULATIONS ARE ADEQUATE TO GOVERN THE PROJECT.		

ALL FINDINGS MUST BE DETERMINED IN THE AFFIRMATIVE FOR THE VARIANCE TO BE GRANTED.

WITH _____ MEMBER PRESENT, AND UPON A VOTE OF _____ FOR, _____ AGAINST, _____ ABSTAINING, THE VARIANCE IS HEREBY:

_____ GRANTED

_____ DENIED

PRESIDING OFFICER OF BOA

DATE



ARTICLE XIII. BOARD OF ADJUSTMENT

Sec. 98-431. Established; applicability of State Law.

- (a) A Board of Adjustment of the City is created and established.
- (b) The Board of Adjustment shall be subject to and shall follow the requirements and have the powers set out in V.T.C.A., Local Government Code § 211.008--211.011.

(Ord. No. 253, §1 (art. XIII, §1), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-432. Membership.

- (a) The Board of Adjustment shall consist of five members who are residents of the City, each to be appointed for a term of two years and removable for cause by the City Council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board of Adjustment shall also consist of four alternate members, each of whom shall possess equal qualifications and also be duly appointed for two-year terms and be removed for cause in the above manner provided by the City Council, and which designated alternate members of the Board shall serve in the absence of one or more regular members when requested to do so by the City Administrator.
- (b) The City Council will consider for appointment to the Board of Adjustment only those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, interest in planning and zoning, and availability to prepare for and attend meetings. It is the intent of the City Council that members shall, by reason of diversity of their individual occupations, constitute a Board of Adjustment which is broadly representative of the City.
- (c) The term of all members shall run in conjunction with the Mayor's term. Members shall be appointed and/or reappointed the first City Council meeting in June following the election of the Mayor in May. The members of the Board of Adjustment shall be identified by place numbers 1 through 5 and the alternate members of the Board of Adjustment shall be identified by place numbers 1a through 4a. Members and alternate members may be appointed to succeed themselves, and all members and alternate members of the Board shall remain in office after the expiration of their term until City Council appoints individuals to fill said positions. Duly appointed members shall be installed at the first regular meeting after their appointment.

(Ord. No. 253, §1 (art. XIII, §2), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-433. Meetings; election of officers; rules of procedure.

The Board of Adjustment shall elect a Chairman and a Vice-chairman from among its members before proceeding to any other matters of business at the first called meeting of each year. The Board of Adjustment shall select a Secretary and such other officers as it deems necessary either from its membership or from staff representatives assigned by the City Administrator of the City to work with the Board of Adjustment. The Board of Adjustment shall meet the second Monday of every month and shall designate the time and place of its meetings. Meetings of the Board shall be held as called

by the City Administrator or Chairman and at such other times as the Board may determine. The Board Chairman, or, in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall adopt its own rules of procedure, subject to the approval of the City Council, and keep a record of its proceedings consistent with provisions of this Chapter and the requirements of State Law.

(Ord. No. 253, §1 (art. XIII, §3), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-434. Jurisdiction; powers.

- (a) *Jurisdiction.* When, in its judgment, the public convenience and welfare will be substantially served and the appropriate use of neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases after public notice and public hearing, and subject to appropriate conditions and safeguards, authorize and shall have the power to grant the following special exceptions to the regulations herein established. In granting such exceptions and regulations, the Board of Adjustment shall not permit within any district a use that is not permitted in that district and the district regulations as set forth in this Chapter. **The Board of Adjustment shall not permit any variations or exceptions if the applicant has contributed to the cause of the unnecessary hardship of which he complains.**
- (b) *Powers.*
 - (1) The reconstruction of a building occupied by a nonconforming use, provided such reconstruction does not prevent the eventual return of such property to a conforming use.
 - (2) Modifications of yard, open space, parking lot area or lot width regulations as may be necessary to secure appropriate development of a parcel of land where such parcel was separately owned at the time of the passage of this Chapter and is of such restricted area where the shape of the lot is such that it cannot be appropriately developed without such modification.
 - (3) Reduce required off-street parking if it can be shown that the required minimum, as herein established, will not at any time be necessary because of the character of the proposed uses, and the probable limited quantity of employees, clients, customers or tenants.
 - (4) Decide appeals where it is alleged there is error in the order, requirement, decision, or determination made by the Building Official or administrative officer in the enforcement of this Chapter.
 - (5) Special exceptions to the terms of the Chapter upon which such Board is required to pass pursuant to this Chapter.
 - (6) Decide matters specifically delegated to it by the City Council under appropriate standard set by the City Council.
 - (7) Upon appeal in specific cases, such variance from the terms of this Chapter will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship, and so that the spirit of this Chapter shall be observed and substantial justice done.
 - (8) The concurring vote of 75 percent of the members of the Board (4 out of 5 Board members) is necessary to:

- a. reverse an order, requirement, decision, or determination of an administrative official;
- b. decide in favor of an applicant on a matter on which the Board is required to pass under the Zoning Code; or
- c. authorize a variation from the terms of the Zoning Code.

(Ord. No. 253, §1 (art. XIII, §4), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-435. Application for special exception.

- (a) All applications for special exceptions shall be in the form of an appeal to the Board of Adjustment.
- (b) *Application form; filing.* Appeals to the Board of Adjustment may be made by any person aggrieved, or by any officer, department, board, or bureau of the City affected by any decision of the administrative officer. Such appeal shall be made by the aggrieved person by filing, within 30 calendar days of the rendering of the decision, a notice of appeal upon a form titled "Application to Board of Adjustment" provided for such purpose by the Development Services Department. The notice of appeal shall be filed with the Development Services Department, with a copy to the City Secretary, and shall specify the grounds thereof. The application shall not be considered as filed until information required on the prescribed application form and associated fees have been provided in full. The City Secretary shall forthwith transmit to the Board all papers constituting the record in the matter being appealed.

(Ord. No. 253, §1 (art. XIII, §5), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-436. Application fees.

- (a) When an application is filed for a special exception or variance, such application shall be accompanied by the fees in conformance with the City's fee schedule. The fees must be in the form of a certified or cashier's check, money order, or credit card payment made payable to the City of Helotes, and be deposited with the Development Services Department at the time the application is filed and shall forthwith be credited to the General Fund of the City.
- (b) No notice of any such application shall be issued and no hearing shall be presented before the Board of Adjustment until the prescribed fees are paid. The Development Services Department shall keep and preserve an itemized record of all fees received and the disposition thereof for each application.

Ord. No. 491, §1, 01-24-2013)

Sec. 98-437. Stay of proceedings.

An appeal shall stay all proceedings in the matter, unless the officer from whom the appeal is taken certifies in writing to the Board of Adjustment that a stay would, in his opinion, cause imminent peril

of life or property. (Ord. No. 253, §1 (art. XIII, §6), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-438. Hearing of appeals.

The City Administrator and City Staff shall fix a reasonable time for the hearing of an appeal and shall give notice to the parties of interest. In addition, at least 16 days advance notice shall be given by publication in a newspaper of general circulation in the City, stating the date, time, and place of the hearing, the parties appealing such matter, and the lot description of the land which the matter concerns. The City shall mail notices of such hearings to the petitioners and owners of property at any point within 200 feet of any point of land on which a variance or special exception is desired and to all other persons deemed by the City to be affected or to be parties in interest. Such owners and persons shall be determined according to the current tax roll of the City. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of appeal, and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board of Adjustment shall be necessary to reverse the order, requirement, decision, or determination of any Building Official or administrative officer. The concurring vote of four members of the Board of Adjustment shall also be necessary to decide in favor of an applicant on any matter upon which the Board of Adjustment is required to pass upon under this Chapter other than an appeal. All votes shall be made by roll call. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the City Secretary and shall be of public record.

(Ord. No. 253, §1 (art. XIII, §7), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Sec. 98-439. Court appeal.

- (a) *Presentation of petition.* Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the City, may present to a District Court, County Court, or County Court at Law, as provided by law, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within ten days after the filing of the decision of the Board of Adjustment with the City Secretary.
- (b) *Writ of certiorari.* Upon the presentation of such petition, the Court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served, which shall not be less than ten days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board, and on due cause shown, grant an order that specifically grants a stay through a restraining order.
- (c) *Return of certified copies.*
 - (1) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ of certiorari as provided for in

subsection (b). Returned copies shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be certified.

- (2) If upon the hearing it shall appear to the Court that testimony is necessary for the proper disposition of the matter, the Court shall take evidence, appoint a referee to take evidence as it may direct, and report the same with its findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm wholly or partly, or may modify, the decision brought up for review.
- (3) Costs shall not be allowed against the Board of Adjustment, unless it shall appear to the Court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (d) *Fee.* In the event jurisdiction of the Board of Adjustment is found not to exist with regard to the issue brought to the Board, a partial reimbursement of the fee, as established by the fee schedule of the City, shall be refunded.

(Ord. No. 253, §1 (art. XIII, §8), 4-8-2004; Ord. No. 387, §1, 12-8-2008; Ord. No. 491, §1, 01-24-2013)

Secs. 98-440 - 98-460. Reserved.